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September 26, 2022

The Honorable Douglas L. Parker  
Assistant Secretary  
Occupational Safety and Health Administration  
Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Dear Assistant Secretary Parker:

On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) mandating workplace COVID-19-related precautions for covered employers in the health care industry,<sup>1</sup> which the agency subsequently withdrew on December 27, 2021.<sup>2</sup> You testified before the Committee on Education and Labor that the agency is working to finalize the ETS as a permanent COVID-19 standard for the health care industry and expects to issue a final standard this fall.<sup>3</sup> In light of President Biden's recent proclamation regarding the end of the pandemic, the impracticality of the forthcoming regulatory scheme, and OSHA's questionable legal authority, we write to express our strong disapproval of your decision to move forward with this ill-advised rule and urge your agency to abandon it.

<sup>1</sup> Occupational Exposure to COVID-19; Emergency Temporary Standard, 86 Fed. Reg. 32,376 (June 21, 2021).

<sup>2</sup> OSHA, STATEMENT ON THE STATUS OF THE OSHA COVID-19 HEALTHCARE ETS (Dec. 27, 2021), <https://www.osha.gov/coronavirus/ets>.

<sup>3</sup> *Examining the Policies and Priorities of the Occupational Safety and Health Administration: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab.*, 117th Cong. (2022) (statement of Douglas L. Parker, Assistant Sec'y of Lab. for Occupational Safety & Health, Dep't of Lab.).

On September 18, President Biden proclaimed in a 60 Minutes interview that “the pandemic is over.”<sup>4</sup> He continued, “[I]f you notice, no one’s wearing masks. Everybody seems to be in pretty good shape ... and so I think it’s changing.”<sup>5</sup>

It appears that OSHA did not get the President’s memo. At the same time President Biden proclaimed the pandemic over, his own administration continued to move forward with a COVID-19 rulemaking, not only reviving a regulatory scheme against health care industry employers that expired back in 2021 but also making the standard permanent. This is the height of foolishness. Our health care industry is strained enough as it is without the Biden administration demanding additional and burdensome COVID-19 requirements. It is overdue for Washington bureaucrats to stop using the pandemic as a pretense to increase top-down federal control over the workplace.

Further, as many stakeholders have already pointed out to OSHA, issuing a permanent COVID-19 regulatory standard mandating precautions that cannot easily be updated is unwise given ever-changing Centers for Disease Control and Prevention (CDC) guidance. OSHA itself has acknowledged that evolving CDC recommendations have resulted in inconsistencies with the initial health care industry ETS, necessitating OSHA to re-open its public comment period to collect more up-to-date information.<sup>6</sup> Adding additional and permanent OSHA requirements for the health care industry on top of evolving CDC guidance is unnecessary and would cause widespread confusion among health care employers and workers without improving workplace safety.

Lastly, we question OSHA’s legal authority for continuing to pursue a long-expired ETS as the basis for a permanent COVID-19 regulation. In granting the agency emergency rulemaking authority, the *Occupational Safety and Health Act* (OSH Act) requires OSHA to replace an ETS with a permanent standard *no later than six months* after publication in the Federal Register.<sup>7</sup> OSHA published the initial health care industry ETS in June 2021, subsequently withdrew it, and is now attempting to publish a permanent standard more than a year later. This is blatantly disregarding the law. If OSHA wishes to pursue this ill-advised and unnecessary rule as a permanent standard, it must do so through the normal rulemaking process outlined in the OSH Act.<sup>8</sup> It cannot assert emergency powers simply to fast-track rulemaking, as the Coalition for Workplace Safety explains:

A withdrawn proposal is not a viable basis for issuing a permanent standard. Utilizing a withdrawn ETS as the proposal for pursuing a permanent standard defies the basic principles of notice required by both the APA [*Administrative Procedure Act*] and the OSH Act. If it chooses to pursue a permanent standard addressing Occupational Exposure to COVID19 in Healthcare Settings, the

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<sup>4</sup> Scott Pelley, *President Joe Biden: The 2022 60 Minutes Interview*, CBS NEWS, Sept. 18, 2022, <https://www.cbsnews.com/news/president-joe-biden-60-minutes-interview-transcript-2022-09-18/>.

<sup>5</sup> *Id.*

<sup>6</sup> Occupational Exposure to COVID–19 in Healthcare Settings, 87 Fed. Reg. 16,427 (Mar. 23, 2022).

<sup>7</sup> 29 U.S.C. § 655(c)(3).

<sup>8</sup> *Id.* § 655(b).

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Agency must first issue a proposal with accompanying regulatory text, seek public comment, and comply with other appropriate rulemaking procedures.<sup>9</sup>

Given President Biden's declaration of the end of the pandemic, the potential COVID-19 health care industry rule's impracticality, and OSHA's lack of authority, we urge OSHA to cease rulemaking on this ill-advised standard immediately. OSHA's exploitation of the pandemic as an excuse to increase federal control over the workplace is damaging to America's workers and job creators. We therefore request that you send us written assurance by no later than October 11, confirming that OSHA is not working on issuing a permanent COVID-19 standard for the health care industry.

Thank you for your attention to our request.

Sincerely,



Virginia Foxx  
Ranking Member



Rick W. Allen  
Ranking Member  
Subcommittee on Workforce Protections

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<sup>9</sup> Letter from Coalition for Workplace Safety (CWS) to Douglas L. Parker, Assistant Sec'y of Lab., OSHA (Apr. 22, 2022), <https://www.regulations.gov/comment/OSHA-2020-0004-2053>. CWS is comprised of associations and employers that believe in improving workplace safety through cooperation, assistance, transparency, clarity, and accountability. See ABOUT THE COALITION, <https://workingforsafety.com/about-cws/>.